

June 19, 2019

Public Records Officer
University of California, Berkeley
pra@berkeley.edu

Dear Public Records Officer;

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 or CPRA), I ask for copies of the records responsive to several requests. I am sending these requests under cover of one letter, so as to not burden your office with multiple filings.

In order to help your office understand the nature of this CPRA filing and help make the search for records efficient, allow me to explain the nature of the material requested. On January 16, 2019, Professor Claudia Polsky revised an opinion piece she published in the UCLA Law Review that argued public records laws are harmful.¹ Edited by UCLA's law students, Ms. Polsky's commentary purports to be a scholarly analysis of abusive public records requests, but appears rather lopsided. For example, her commentary does not include a 2015 Center for Public Integrity report that gave California an "F" for public access to records;² a 2017 request by Electronic Frontier Foundation to strengthen rather than weaken California CPRA;³ nor commentary and/or scholarship by David Cuillier, director of the University of Arizona School of Journalism and a member of the Society of Professional Journalists' freedom of information committee, who regularly publishes research on public information requests.⁴

Ms. Polsky then appeared at a California hearing to support proposed legislation called AB700 and stated, "AB700 is a careful solution that I've endorsed along with 180 academics across California, in every academic discipline." Over a dozen public interest groups filed opposition to AB700 before it was withdrawn. Among others, opposition included the Reporters Committee for Freedom of the Press, American Civil Liberties Union, California Newspapers Publishers Association, Electronic Frontier Foundation, Society of Professional Journalists Northern California chapter, Greenpeace, US Right to Know, and the Society of Professional Journalists/Los Angeles chapter.

In opposing the bill, the San Diego Chapter of the Society of Professional Journalists wrote, "We rarely ask our members to take public positions on bills, but this one is **too dangerous** for us to be silent."⁵ In urging the California legislature to "let the bill die," Nancy Barnes Senior Vice President of News and Editorial Director at NPR, with the American Society of News Editors, wrote, "AB 700 would **set a dangerous precedent**, both in terms of access to

¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3140154

² <https://publicintegrity.org/accountability/california-gets-c-grade-in-2015-state-integrity-investigation/>

³ <https://www.eff.org/deeplinks/2017/08/its-time-strengthen-californias-public-records-law>

⁴ <https://journalism.arizona.edu/users/david-cuillier>

⁵ <https://spjsandiego.org/2019/04/28/help-us-protect-the-public-records-act/>

information generally and in terms of access to information relating to research at postsecondary educational institutions.”⁶ [emphasis added in bold]

Nonetheless, Ms. Polksky then gave a radio interview to NPR’s “On the Media” where she made, what appear to be, several unsupported allegations about public information requests, while claiming that her advocacy was academic scholarship.⁷

Accordingly, I request the following:

REQUEST 1: Because professional journalism organizations have described Ms. Polksky’s advocacy for AB700 as “dangerous” to the public interest, I request that all searches for records be performed by another official at UC Berkeley, chosen to act as an objective third party. Please explain how the search for records will be completed.

REQUEST 2: Please provide all communications between Ms. Polksky and the Union of Concerned Scientists and/or any legal representative of the Union of Concerned Scientists; and/or matters concerning the Union of Concerned Scientists. The time span of this request covers June 2017 to the present. Search terms would include “Union of Concerned Scientists” “Michael Halpern” and emails with “@ucsusa.org”.

REQUEST 3: During an interview with “On the Media” Ms. Polksky stated, “This is where we get into my basic argument which is that universities are different. They don’t have coercive power over anyone in a way that undergirds public records laws.” Yet, Ms. Polksky has not explained if this means the public should not access records of other public employees who do not seem to have this “coercive power” such as social workers, school administrators or employees at public water works. Accordingly, please provide all communications by Ms. Polksky regarding AB700 and/or changes to other freedom of information laws. The time span of this request covers January 2018 to the present.

REQUEST 4: During an interview with “On the Media” Ms. Polksky described public information requests as fishing expeditions that catch “one scandal out of the fifty records requests.”⁸ Please provide any documents and/or communication supporting Ms. Polksky’s “one scandal out of the fifty records requests” public statement. The time span of this request covers January 2018 to the present.

REQUEST 4: In her UCLA Law Review article, Ms. Polksky cites UC Davis researcher Dr. Alison Van Eenennaam as an example of an academic harmed by public records requests. Yet Dr. Van Eenennaam has worked very closely with Monsanto executives and serves as a spokesperson for GMO Answers⁹, a PR website launched by Monsanto and Bayer. Accordingly, please provide all emails between Ms. Polksky and Ms. Van Eenennaam and/or any emails regarding Ms. Van Eenennaam. The time span of this request covers January 2018 to the present.

⁶ https://www.asne.org/blog_home.asp?Display=2567

⁷ <https://www.wnycstudios.org/story/impossible-on-the-media-2019-05-10>

⁸ <https://www.wnycstudios.org/story/impossible-on-the-media-2019-05-10>

⁹ <https://gmoanswers.com/experts/alison-van-eenennaam>

REQUEST 5: Law professors regularly take on outside clients. Under University policy (APM-025), faculty are required to submit annual reports to department chairs on their outside professional activities which includes consulting. This policy requires written prior written approval, submitting annual reports to the Department Chair, and disclosing any current or prospective outside professional activity to the Department Chair if in doubt as to whether there is a conflict of commitment.¹⁰ Accordingly, please provide Ms. Polksky's APM-025 reports, any written prior approval of outside consulting, and disclosures of outside consulting to her Department Chair.

As required by the CPRA, I ask for a determination on this request within 10 days of your receiving this letter. Please also state the estimated date when records may be available.

If any official determines that any requested item meets an exemption from disclosure, please note if exemption is discretionary, and whether it is necessary to exercise your discretion to withhold the information. Also, provide please signed notification citing the legal authorities for exemption, as well as the name and title of the official responsible for denying access. (§§ 6253(d), 6255)

Furthermore, If an official determines that some but not all of the information meets an exemption from disclosure, please redact that portion, citing the specific exemption, while make the rest available as requested. Also, provide please signed notification citing the legal authorities for exempting the disclosure, as well as the name and title of the official responsible for denying access. (§§ 6253(d), 6255)

Under the CPRA, there is no charge for me to inspect these records, and the university may only charge direct costs for duplications, such as running the copying machine, paper, and staff time to make copies. There is no charge associated with the cost of staff time associated with retrieval, inspection, redacting, or handling. However, I am asking for electronic records, meaning emails and/or documents shared electronically. In this case, the cost of duplication is limited to the direct cost of producing a copy of a record in an electronic format (e.g., the cost of the diskette).

If I can provide any clarification that will help expedite your attention to my request, please contact me at thackerpd@gmail.com to set up a time when we can discuss the matter by phone. I ask that you notify me of any costs exceeding \$100 so that I may decide which records I want.

Thank you for your time and attention to this matter.

Sincerely,



Paul D. Thacker

¹⁰ https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-025-07-01.pdf